

# ARKANSAS SUPREME COURT

No. CR 06-213

NOT DESIGNATED FOR PUBLICATION

FREDERICK PENNINGTON, JR.  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered April 6, 2006

*PRO SE* MOTION FOR BELATED APPEAL OF  
ORDER [CIRCUIT COURT OF PULASKI  
COUNTY, CR 77-1933, CR 77-1934, CR 77-1939,  
HON. JOHN LANGSTON, JUDGE]

MOTION DENIED

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## PER CURIAM

In 1978, Frederick Pennington entered a plea of guilty to capital felony murder, first degree battery, and multiple counts of aggravated robbery. An aggregate sentence of life imprisonment was imposed.

In 2005, Pennington filed in the trial court a *pro se* pleading entitled “New Rule of Law for Mandamus Motion to Withdraw Guilty Plea,” which was denied on June 10, 2005, on the grounds that it was untimely and constituted an unauthorized subsequent petition pursuant to Criminal Procedure Rule 37.2(b). On July 19, 2005, petitioner Pennington filed two notices of appeal from the June 10, 2005, order.

When the appeal record was tendered to this court, our clerk correctly declined to lodge it because a notice of appeal was not filed within the thirty-day period allowed for filing a notice of the order. As grounds for the motion, he contends that he mailed a notice of appeal to the clerk and that it was timely filed, and, moreover, that there was merit to the pleading denied by the trial court. Petitioner offers no proof that a notice of appeal was received by the clerk within the thirty-day period, and the record contains only the two untimely notices filed July 19, 2005.

A petitioner has the right to appeal a ruling on any petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right goes the responsibility

to file a timely notice of appeal within thirty days of the date the order was entered. If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure, regardless of the merit of the pleading denied by the court. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). The fact that a petitioner is proceeding *pro se* does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*).

This court has specifically held that it is not the responsibility of the circuit clerk or anyone other than the petitioner to perfect an appeal. *See Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*). The litigant who claims to have mailed an item has the burden of proving that it reached the circuit clerk by the date it was due to be filed. *See Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (*per curiam*). The bare allegation that a notice of appeal was mailed is not good cause to grant a belated appeal. *Skaggs v. State*, 287 Ark. 259, 697 S.W.2d 913 (1985) (*per curiam*). As petitioner has not established that the clerk received a notice of appeal within thirty days of the date the order was entered but did not file it, and he has stated no good cause for his failure to file a timely notice of appeal, the motion to proceed with a belated appeal is denied.

Motion denied.